15 Box 3 - [JGR/Appointee Clearances – 10/01/1983-11/30/1983] - Roberts, John G.: Files SERIES I: Subject File

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name Roberts, John

Withdrawer KDB 7/28/2005

File Folder [JGR/APPOINTEE CLEARANCES - 10/01/1983-11/30/1983]

FOIA F05-139/01 COOK

Box Number 11 KDB

Doc No	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO RICHARD HAUSER, RE NOMINATION OF EDMUND PC STOHR	1	10/18/1983	B6	1135
2	MEMO	J. ROBERTS TO RICHARD HAUSER RE NOMINATION OF EDMUND P. C. STOHR	2	10/12/1983	B6	310
3	FORM	RE EDMUND STOHR	1	8/1/1983	B6	311
4	MEMO	ROBERTS TO FRED FIELDING RE DIEGO ASENCIO	1	10/18/1983	B6	312
5	MEMO	ROBERTS TO FRED FIELDING RE DIEGO ASENCIO	1	9/26/1983	B6	313
6	MEMO	CLAIRE O'DONNELL TO JANE DANNENHAUER, RE PAS AND PA CANDIDATE WITHDRAWALS	1	10/31/1983	B6	1136
7	MEMO	CLAIRE O'DONNELL TO JANE DANNENHAUER, RE PAS AND PA CANDIDATE WITHDRAWALS	1	11/18/1983	B6	1137

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
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B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

William H. Luers - to be Ambassador to the Czechoslovak Socialist Republic

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

THE WHITE HOUSE

WASHINGTON

October 14, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances have been accomplished with regard to the following individual and she is ready for appointment by the President:

Betty Cuevas - Member, Advisory Committee on Small and Minority Business Ownership

cc: Claire O'Donnell
Jane Dannenhauer
John Roberts
Barbara McQuown

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 21, 1983

The President today announced his intention to appoint Betty Cuevas to be a Member of the Advisory Committee on Small and Minority Business Ownership. She will succeed Del Green.

Mrs. Cuevas is founder, owner and manager of Cuevas Catering Service and Cuevas Restaurant in McAllen, Texas. Previously, she held various positions with a retail food chain in San Antonio, Texas in 1963-1971. She is a member of the Ladies LULAC Council and was President of the Mexican-American Chamber of Commerce in 1977-1978.

She is married, has three children and resides in McAllen, Texas. She was born July 8, 1936 in San Diego, Texas.

# # #

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2	MEMO J. ROBERTS TO RICHARD HAUSER RE NOMINATION OF EDMUND P. C. STOHR	2	10/12/1983	B6	310

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United States Department of State

Washington, D.C. 20520

September 20, 1983

Mr. Richard Hauser
Deputy Counsel to the President
The White House

Dear Mr. Hauser:

Enclosed are copies of the Standard Form 278 Financial Disclosure Report and other conflict of interest materials for Mr. Edmund P. C. Stohr, who is under consideration for nomination to the Rank of Minister in connection with his service as United States Representative to ICAO in Montreal.

Sincerely,

K. E. Malmborg

Knute E. Malmborg
Assistant Legal Adviser for
Management & Deputy Designated
Agency Ethics Official

Enclosures

BETSY WARREN
DEPUTY ASSISTANT SECRETARY
FOR LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS

DEPARTMENT OF STATE
WASHINGTON, D. C. 20520

ROOM 7261
(202) 632-3436

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THE WHITE HOUSE

WASHINGTON

October 18, 1983

MEMORANDUM FOR RICHARD A. HAUSER
H. LAWRENCE GARRETT, III

FROM: JOHN G. ROBERTS JGR

SUBJECT: Village Voice Article on Judge Clark

The Village Voice article by Betty Medsger basically raises three serious allegations that Judge Clark must be prepared to answer at his confirmation hearings:

1. Judge Clark was the source of the allegation that Justice Tobriner delayed the Tanner decision to help Chief Justice Bird in her recall fight, and he gave misleading testimony at the subsequent hearings investigating that allegation.

2. Judge Clark had a source outside the Court prepare a dissent for him in the Cooper v. Swoap case.

3. Judge Clark kept Governor Reagan apprised of the confidential proceedings of the Court.

The article is full of other contentions concerning Judge Clark - such as that he never did his own legal research or writing and did not participate in Court conferences or ask questions in oral argument - but these allegations are general ones concerning his competence rather than his personal integrity, and seem unlikely to become the focus of any questioning.

FRIENDS OF THE EARTH

530 7TH STREET, S.E., WASHINGTON, D.C. 20003
(202) 543-4312

October 14, 1983

To: Members and Staff, Senate Energy and Natural Resources Committee:
From: Friends of the Earth
Re: Willam Clark-nomination for Secretary of Interior

Attached please find an article published on July 5, 1983 in the Village Voice on Interior Secretary nominee William Clark.

We hope to provide you with more information on this nominee and on the Reagan administration environmental record. Please feel free to call us at 543-4312 with any questions.

Good Luck!

JULY 5, 1983 90¢

A Once and Future Danger

William Clark's Dishonorable Past

By Betty Medsger

William P. Clark, close friend and national security adviser to President Reagan, has led a charmed life.

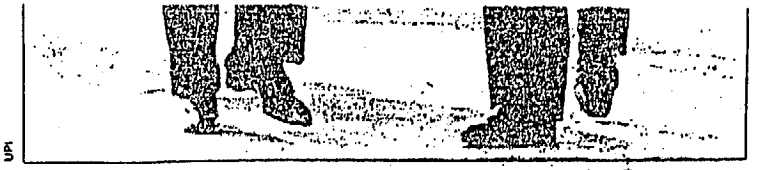
It is well known that Clark was unable to define "détente" or "third world" when he appeared before the Senate Foreign Relations Committee for confirmation after the president nominated him to become deputy secretary of state in January 1981. He also said he did not have a personal opinion about nuclear nonproliferation.

The most stinging criticism of the former California Supreme Court Justice came from a Republican, Senator Charles Percy. "Why, anyone has to have an opinion on that subject," Percy said. The senator voted for the nominee only because the president, on his second day in office, told him "in no uncertain terms how much he wanted Justice Clark in this job, and also how strongly he felt about his qualifications for it. . . . But never again," Percy declared as he cast his vote, "can we accept a candidate who professes ignorance in an area where he is to be given responsibility."

The man who would be in the number two position in the State Department joked with reporters that his foreign policy experience until that time was limited to "72 hours in Santiago." But Clark apparently was not joking when he listed as a qualification for the high-level foreign policy, his stint as a young lawyer representing a Salzburg ski-binding company. Given his friendship with Reagan and his foreign policy job, Clark is arguably one of the most powerful people in America. That's a stunning achievement for a man who flunked out of college and law school. But Clark's lack of education is not the main problem. According to sworn testimony and interviews with many former colleagues, Clark engaged in serious deception and unethical activities throughout his years on the California Supreme Court.

Several of the allegations of wrongdoing are so serious that had they become known while Clark was serving on the court, long one of the most respected appellate courts in the *(Continued on page 9)*

Article from the Village Voice-July 5,1983



UPI

Serious charges of incompetence and unethical behavior, while on the California Supreme Court, haunt William Clark, Reagan's friend and national security adviser.

By Betty Medsger

(Cont. from page 1) nation, he probably would have been removed from the bench. This is particularly significant in light of the persistent rumor that the president hopes to nominate Clark to fill the next Supreme Court vacancy. There even is speculation that the president would like Warren Burger to retire so he can name Clark chief justice.

Should Clark, who is 51, ever be nominated to the Supreme Court, the following charges would surely attract the attention of the United States Senate which must approve the nomination. Even if Clark is not proposed for the court, these charges of unethical activity and incompetence should be part of the public record of a man who presently wields enormous power in the Reagan administration.

● Clark may have lied under oath at his Senate confirmation hearings and during the historic 1979 investigation of the California Supreme Court.

● Clark himself—rather than those he accused—apparently took steps to delay the court's controversial use-a-gun-go-to-prison decision until after the 1978 election in an attempt to defeat California chief justice Rose Bird at the polls. This is based on heretofore secret, as well as public, portions of that investigation.

● Clark, at times, acted as a spy for Governor Reagan on the California Supreme Court.

● Clark may have had someone outside the court write or advise him on at least one case.

● Clark reportedly never did original work on his opinions during his two years on the California Court of Appeal and during at least his first year on the California Supreme Court.

● Clark was so thoroughly unknowledgeable about the law that he could not discuss basic legal concepts at the court's weekly private conferences where the court decides what cases it will hear.

When Reagan became governor, he elevated, in 1970, Donald Wright to Chief Justice of the California Supreme Court. Though Wright, Reagan's first appointment to the high court, was a widely respected chief justice and a Republican, Reagan eventually became disappointed with him, and publicly rebuked Wright for his performance on the court. But more important, Reagan took the unethical step of seeking to intervene in the judicial process.

Both Wright and the bailiff, Robert Bolster, (who was also his driver) recall the incident. "He called and invited me to lunch in Sacramento," Wright told me. "He said he believed it would be good if we got a little acquainted with each other. The two of us, the governor and I, went to lunch with Herb Ellingwood [then, as now, key aides to Reagan] "I remember really enjoying the lunch." But, according to Wright, Reagan wanted to do more than get acquainted: "He went on and on, told me why he had felt compelled to veto the [reapportionment] bill. I made no comment. Then I said, 'You understand the matter is before us, and it would be inappropriate for me to comment about it.' I said, 'I'm working on that opinion right now.'" There was an awkward silence, Wright said. Then the governor turned to Meese and said, "Ed, would you get the gift?" Meese produced a nicely wrapped box. The chief justice opened it and found cuff links, each engraved, "To Don from Ron."

Wright was livid when he got to the car. He told the Bolster what Reagan had done and then angrily exclaimed, "How can they be so crazy to bring me up here to discuss a case?"

On more than one occasion, Wright said, Reagan's appointment secretary in Sacramento, Ned Hutchinson, "would say to me, 'The governor didn't like that opinion you signed.' I told Ned in certain terms that I was sorry but I could not be convinced by it and that it was not the prerogative of the executive branch to have anything to do with our opinions."

The 1972 death penalty case, *People* v. *Anderson*, most provoked Reagan's public anger at Wright. By a 6-1 vote, the California Supreme Court declared the death penalty unconstitutional under California law. "This is when the governor first got mad at me," Wright told me. "I think I was much more liberal than he was inclined to be. He was surrounded by people like Ed Meese and Ellingwood who are law-and-order-minded."

Reagan then became determined to get rid of Wright. On one occasion, according

Continued on next page

Betty Medsger, an award-winning investigative reporter, was formerly on the staff of The Washington Post. *She is now an associate professor of journalism at San Francisco State University. This is adapted from her book,* Framed: The New Right Attack on Chief Justice Rose Bird and the Courts *which is being published June 29 by the Pilgrim Press.*

Wright's cooperation. He tried to get Wright to say he would step down in late 1974. At Reagan's request, the chief justice met with him again. Two years earlier, Wright had had a heart attack and told Reagan that if his health didn't improve, he might want to retire early. Though his health improved substantially, Reagan still wanted Wright to retire before Jerry Brown became governor. Wright said he told him I'd think it over, but I said, 'I might as well tell you that I'm not interested in retiring. I like the job.' I could tell he didn't like what I said." Wright didn't retire until early 1977, well after Reagan had left Sacramento.

Reagan and his closest aides remain furious about the opinions Wright wrote or joined at the court. Meese said during the 1980 presidential campaign that, before appointing Wright, "We scrutinized every one of his opinions and thought he had a favorable judicial philosophy." What they didn't take into account, apparently, was that an independent legal mind may decide from time to time that the constitution does not endorse Ronald Reagan's interpretation of the law. Finally, in 1973, Reagan thought he had just the right person for the Supreme Court. When Justice Raymond Peters died early that year, Reagan quickly nominated William Clark, than a court of appeal judge in Los Angeles, to replace him.

When the nomination was announced, Clark was warmly welcomed by the other justices. Wright personally introduced him to his future colleagues.

"He shook hands all around, Wright recalls." It was very friendly. Justice Matthew O. Tobriner was the first person to speak up. He said to Clark, 'It's so good to have another Stanford man on the court,' and then Justice Burke smiled and said, 'Well, I'm glad to have another Loyola Law School graduate on the court.'" Within a few days they would look back at their innocent schoolboy remarks with a wince. They had read of his school background in that morning's paper. "Everyone was cordial," recalls Wright. "I invited him back into my chambers. When we were alone, I told him I would do what I could to get an early confirmation hearing, that we needed a full court to work well.

"While the court was still south, the Santa Monica newspaper ran a story ... that indicated Justice Clark was not a graduate of Stanford. ... It said his departure was brought about by scholastic deficiencies and he flunked out of Loyola Law School. I began to wonder. I could not blame him for not speaking up in front of all the justices, but I felt that when he and I had our private talk, he should've said something. When the announcement came from the governor's office, it had indicated he was a graduate of both schools."

Wright was disturbed. As chairman of the three-member Commission on Judicial Appointments, he would be voting on Clark. In an unprecedented action, he asked the State Bar's Board of Governors to prepare a detailed report on Clark's background. Reagan was angry and denounced Wright publicly.

The State Bar report on Clark confirmed his embarrassing academic record. But it also confirmed that Clark had perhaps never lied on any records about his background. In some instances, at the governor's office, for example, he apparently had merely permitted mistakes to be made but did not make them himself. On his State Bar application card, which he filled out after passing the State Bar examination on the second try, instead of writing "none," he crossed out "graduate of" and listed the two schools where he had flunked.

Donald Wright did not think a person should serve on the Supreme Court if his integrity was in question. If Clark had been misleading about his background

WIDE WORLD PHOTOS

attack on the California court system. He was instrumental in attempts to have Chief Justice Rose Bird recalled by the voters in 1978.

the chief justice feared he had, he thought this raised serious questions about the nominee.

In 1970, Clark distributed a misleading campaign brochure when he ran for the superior court. In it Clark put facts about his past in the form of questions:

"Has family background in law enforcement and agriculture?"

"Earned his way through college and law school?"

"Has presided at more than 60 trials?" The questions seemed designed to create a specific impression: that Clark had graduated from college and law school. And the format seemed to be part of a design to leave Clark technically not a liar.

The State Bar's report on Clark said he was not considered a "leading lawyer," perhaps not even a good one, in the small community of Oxnard, north of Los Angeles. Clark had seldom appeared in court. He wrote contracts, leases, and wills. Some lawyers told the State Bar that the legal documents prepared by Clark were "often too short and too superficial to handle the problems that the transactions contemplated." He did not have an adequate degree of intellectual depth, said these colleagues from Oxnard. According to the report on Clark, while some praised his capacity for brevity at the court of appeal, others said this indicated his incapacity as a judge. The few opinions he wrote, they said, were superficial, failed to treat the important issues in the cases, were not supported by adequate or competent legal authority, or overlooked applicable authority. Significantly, his opinions showed a "lack of understanding of fundamental judicial process."

The bar board found nothing that would technically "disqualify" Clark, but said a summary of the views of Clark by colleagues was that he "has not demonstrated that he has ... present experience and capacity to handle complicated or difficult matters with that degree of skill which should be expected of Supreme Court justices."

Wright conducted his own investigation of Clark in the weeks before the confirmation vote. "I thoroughly investigated him," he said. "I phoned lawyers and judges in Ventura County [where Oxnard is located] myself and I found out he had a very limited practice. ... He [also] had not done much when he was on the Court of Appeal."

"I could not bring myself to believe he was qualified to become a member of the [California] Supreme Court," Wright told me after Clark had gone to Washington. "I knew I would be defeated, but I felt I had to oppose him. This was probably the first time a chief justice had voted against a nominee for the Supreme Court."

Clark had established his value to Reagan early on in Sacramento, where he the first Reagan administration, Clark established a procedure that proved to be invaluable to the governor. He issued a rule that no one in state government should send the governor a memo or report more than one-page long. It was unclear whether the technique was truly efficient or simply ingrained superficiality as a way for Reagan to deal with major as well as minor issues. The affinity of the two men went beyond Clark's ability to bring coherence to Reagan's work and their common interests. They were soul brothers, they agreed on issues. Such as Reagan's efforts as governor to kill California Rural Legal Assistance, which provided legal aid for the rural poor, including many Mexican-American farm workers.

Clark always had great skill in echoing Reagan's opinions, perhaps even in shaping them. Still, his rewards seem beyond his abilities—a seat on the California Supreme Court, deputy secretary of state, national security adviser. At his Senate confirmation hearings, he said he had been asked to become attorney general, director of the Central Intelligence Agency, or secretary of agriculture in the Reagan administration in Washington. He said he rejected those offers and accepted the high post at State only after the president, through Meese, asked him to take it. Clark himself probably provided the most incisive explanation of his ascent. In 1969, shortly after Reagan had made him a trial judge, Clark described. Reagan's attitude toward the people he appoints: "He values loyalty above competence."

William Clark enjoyed considerable protection while on the court. "The important thing to me when he [Clark] arrived," Wright told me, "was that I now had two justices instead of one not participating. Both [Marshall] McComb [who was eventually forced from the court because of senility] and Clark would just sit there." McComb never asked questions of lawyers who argued before the court, but neither did Clark. This was considered highly unusual. At the hearings the justices ask questions of counsel to probe legal issues, or to challenge the lawyers to convince the justices on a given point. Supreme Court justices, as well as lawyers who have argued before the court, say Clark usually said nothing from the bench.

The justices were shocked by his behavior at their weekly private conferences. One person said that when Clark occasionally spoke he would "argue for an ideological point, not a legal point. He could not substantiate his opinions with

...ustices' weekly private conferences ...med even more unusual than his not ...ing questions at public hearings. ...Then it came to solicitation of votes," ...d Wright, "frequently he'd say, 'I have ...look into it further, put me in question ...rk,'" an indication that Clark hadn't ...de up his mind and was going to think ...re about the case, was going to ask his ...f for advice, or, as some justices later ...me to fear and believe, was asking peo... outside the court for advice on opin...

Wright learned that Clark had gone to ...meone outside the court either for ad...e on one of his dissents or for help in ...e actual writing of the dissent. This ...olved his dissent in *Cooper* v. *Swoap*, ...e of a series of welfare cases that at...cked the Reagan administration's at...mpts to reduce welfare payments. The ...rt's decision in the case, written by ...Briner, invalidated Reagan's welfare ...nctions.

In a little-noticed moment in Clark's ...ate confirmation hearing in 1981, ...rk was asked if he ever had outside ...p in writing a court opinion. He said he ...d not. Chief Justice Wright told me he ...eves that statement, made under oath, ...s not true. After the Senate confirma...n hearing, I asked Wright if he still ...eved Clark ever had someone outside ...court write an opinion for him. "Yes," ...responded, "I believe he did.... It was ...strong feeling that someone outside ...court wrote that opinion.... I didn't ...it. I was very upset.... I never knew ...for certain, but I believed it to be the ...."

Clark's secretary at the time, Connie ...trell, told me she also felt certain that ...meone outside the court wrote his dis...t in *Cooper* v. *Swoap*. Cantrell, who ...a master's degree in English, was ...d by Clark to write letters for Reagan ...ly in his first term as governor. She also ...ked for Meese in Sacramento. When ...gan appointed Clark to the court of ...eal, Clark hired Cantrell to work for ...She said he told her he needed help ...h his writing. "He wasn't illiterate," ...said, "but he wasn't competent."

Cantrell said she believes that during ...three years she worked for Clark at ...two courts, the court of appeal and the ...preme Court, he never wrote an opin...or did legal research. During that ...e, she said, he was nearly totally de...dent on his law clerks. She, too, was ...sonally convinced" that he had the ...e welfare case "written outside the ...rt.... He gave me one opinion that I'm ...did not come out of our staff. He said ...had written it, but I had worked for ...e guys [Clark and his clerks] for three ...s by then. I knew their writing, and I ...sure it had not been written by any...in our office. When he gave it to me, ...as clear it had been typed on a type...er that did not exist at the Supreme ...rt. Besides that, the language was not ...iece of legal work; it was a soapbox ...eal.... My impression at the time was ...it had come out of the governor's ...e." Others believed the source was ...e likely to have been an attorney who ...the State Department of Welfare, the ...cy that was a party to the suit.

...He gave it to me on a Monday morn... ...said Cantrell, "and asked me to re...it. I read it and went to him and said, ...at is this?' I told him that I thought it ...not an opinion. He told me he had ...d it over the weekend at his ranch." ...I was something Cantrell said he had ...previously done in the three years she ...worked for him, though he had spent ... weekends at the ranch. Cantrell ...s Clark fired her after she asked him ...meone outside the court wrote his ...nt in the case.

...right said he was very troubled by ...matter. Especially troubling was the ...ation that the person Clark had gone ...

about the matter. Clark reportedly denied the accusation. In the end, Clark submitted a different dissent and said in it that he was relying on information written in a law journal—an article written by Zumbrun and another man who had recently left the State Department of Welfare.

Wright also received confirmation of another serious violation of ethics by Clark—discussing pending cases with people outside the court. He was astonished. It led him to tell Bolster: "We have to be very careful about Mr. Clark."

Bolster said he asked the chief justice, "How do you mean?" and the chief justice replied, "I think we've got a spy in our midst."

Chief Justice Wright said he received confirmation that such conversations had taken place. One morning a member of the court staff told the chief justice that Justice Clark usually came to work early and called the governor's office nearly every morning before others, including Clark's own staff, arrived. In these calls, Wright learned, Clark reported confidential activities of the court, including information about pending cases, to the governor's office. The staff member told Wright he had actually heard the conversations. Wright was angry at both the staff member and at Clark. He ordered the staff member to stop eavesdropping on Clark's conversations. But at the same time the chief justice was profoundly disturbed by the possibility that Clark was discussing confidential matters with the administration. "We had a very strict rule of confidentiality," said Wright.

I sent Justice Clark a series of questions about the accusations others made against him. He did not respond. But the registered letter did prompt a response from Richard C. Morris, his law clerk at the Supreme Court since 1977, who went to Washington with Clark and now serves as his special assistant at the White House. Interestingly, Morris does not say he is writing on Clark's behalf or expressing Clark's views. In essence, Morris denied the accusations. But his answers to specific questions are oblique, if not evasive. The only instance in which Morris implies Justice Clark participated in formulating the answer regards the circumstances of Cantrell's dismissal. Morris wrote that she terminated her employment, that the reasons were "personal," and that "Judge Clark deems it improper to further comment on them."

Reflecting on the four years he served with Clark, Wright said: "I never heard him express himself enough to know what kind of legal mind he had. I cannot say that to you for anybody else I've ever worked with. There's nothing but a vagueness there on how he thinks. He leaves you not knowing what knowledge he has. He authored a very small number of majority opinions, many dissents, but they were very short. He offered no detailed breakdown on why he thought the majority was wrong.... I really don't know what kind of mind he has. It's astounding that you could work with someone for four years and not know whether they can think."

William Clark sat on the Supreme Court for five years in relative obscurity. Though some members of the court were privately embarrassed and angry about his alleged improprieties, few people outside the court knew much about him. Then, in 1978, he became a central figure in a scandal that stayed on the front pages of California newspapers for more than a year.

In 1977, Governor Jerry Brown had appointed Rose Bird to become not only the first woman chief justice of the Supreme Court, but the first woman ever to serve on it. She attracted opposition like a lightning rod. Many, including some

wanted to discuss an
the court. Wright de
with engraved cuff li
was fi

would appoint someone with no experience as a judge to become chief justice o such a widely respected appellate court But there were a lot of eminent jurist from the past, including Chief Justic Earl Warren, who had been placed in higl judicial positions without prior experi ence on the bench. Some felt that Ros Bird's appointment was to Jerry Brown a William Clark's had been to Ronald Rea gan: an affront to both the judiciary an the public. But whereas Clark flunked ou of both college and law school, Bird wa graduated from both with distinction magna cum laude and "most outstandin senior" at Long Island University in 1958 and honors prizes at Boalt Hall School o

then-Chief Justice Donald Wright nvited to lunch, Governor Reagan l to discuss an important case before urt. Wright demurred, but ended up ngraved cuff links. The chief justice was furious.

someone with no experi- to become chief justice of respected appellate court. a lot of eminent jurists , including Chief Justice ho had been placed in high ons without prior experi- nch. Some felt that Rose nent was to Jerry Brown as s had been to Ronald Rea- to both the judiciary and whereas Clark flunked out and law school, Bird was m both with distinction: ude and "most outstanding g Island University in 1958, izes at Boalt Hall School of Law at the University of California at Berkeley in 1965. Whereas the dean of Clark's law school asked him to leave, the associate dean of Bird's law school would say about her: "I cannot speak too highly of her. . . . She was the best who had been through Boalt Hall in a long time." Bird worked as a public defender and as a respected part-time lecturer at Stanford Law School. She went to Sacramento shortly after Brown was elected to join his cabinet as the head of the largest state agency, the Agriculture and Services Agency.

When Brown appointed her chief justice, she was best known to the public as a key architect of the Agriculture and Labor Relations Act, legislation that guaranteed farm workers the right to organize and negotiate labor contracts. It also guaranteed Bird the permanent enmity of agribusiness, probably the most powerful lobby in California.

The fact that she was only 40, a woman, and a liberal, figured significantly in the early opposition to Bird. She arrived on the bench just at the time that the kingmaker of the New Right in California, State Senator H. L. Richardson, had decided that he would use his large computer and financial resources to do to liberal judges what he already had been doing successfully to liberal legislators: remove them from public office by choosing and financing their opposition. By 1978 Richardson thought that the public pulse about crime was so high that it might be possible to throw a Supreme Court justice off the bench. No appellate court judge had ever come close to losing the approval of the California voters. They run unopposed and always have been virtual shoe-ins. But Richardson, a man with flair for his original occupation, advertising and public relations, recognized Bird's value to him. John Feliz, a former Los Angeles police officer who is

Continued on next page

and [Frank] Newman [other Supreme Court justices] as I am at her. . . . We use her because it's a convenient symbol. . . . She is no different than the men on the court. She is simply a convenient focus. She's a perfect symbol."

Sexism made her a convenient symbol not only for the New Right, but also for some liberals who resented her. Stanley Mosk was the best known of the would-be chief justices. Bird won't say what it was that Justice Mosk said to her on her first day at the court, but the story is widespread, largely because Mosk himself has said essentially the same thing many times in private. The most charitable version is a harsh variant of what each of the three bears said: "Somebody's been sitting in *my* chair."

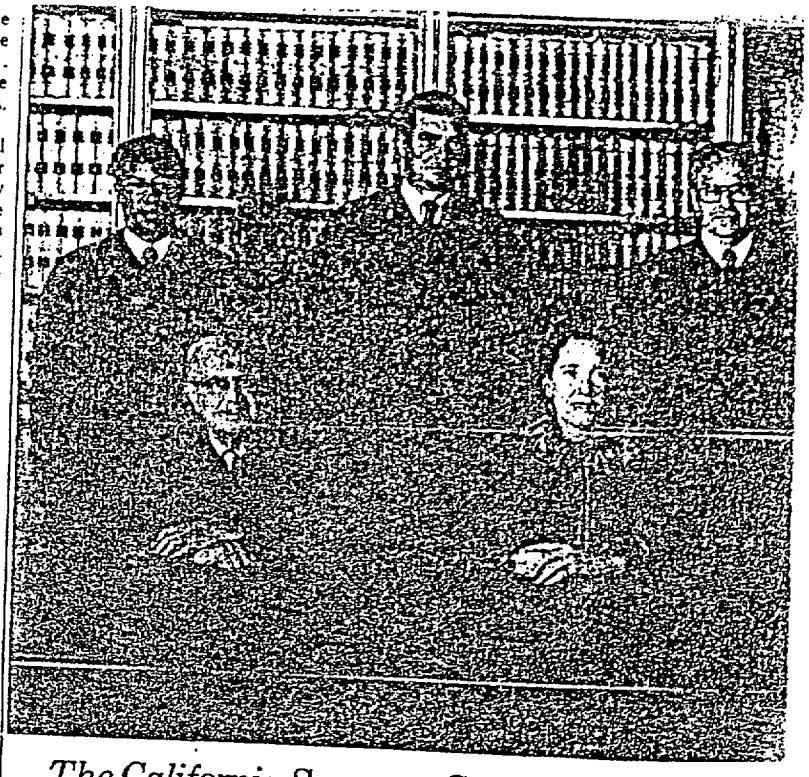
As the chief justice, Bird is not only one justice among seven equals in determining court opinions. She also is the administrator of the entire California judiciary, with 200 judges, the largest in the world. She moved quickly to make a number of administrative changes, most of them now recognized as improvements. But even Bird acknowledges that the changes would have been more readily accepted if she had moved more slowly. She had cancer and, though it never disabled her, it did impell her, she now realizes, to move faster than she otherwise would have.

The reaction to her was so strong that perhaps change at any speed would have been rejected. In her first years, Bird's policies provoked strong reactions within the court and its staff. The smallest change ended up as the basis of a news story, many of which were either inaccurate or incomplete. For instance, reporters repeated many times a report that Bird had mysteriously switched the locks on her office. It was true, but most never explained—or asked—why. That incident would be used as an example of paranoia. In fact, there was strong justification for changing the locks. One Saturday night she and members of her staff were working late in her office. As they worked, according to others who were present, a key turned in her door and in walked a court of appeal judge. He stared at them briefly, offered no explanation for his presence and, then, as he was leaving, said, "Oh, I see you are working late." It was, of course, improper for anyone, including that judge, to be entering her private office surreptitiously.

Though news stories often quoted only court staff members who opposed her, there were many people on the staff who did not participate in the movement to discredit her. They told me that they feared retaliation from some of their colleagues. "I was accused of being an informer—and just because I wasn't part of the hate campaign," one man said. "Sure," he said, "I was hoping someone on the court would get the job. After that was not the case, I felt she deserved my loyalty. But some said right away, 'Let's make it tough on her.' And they did."

One woman on the staff described to me an extraordinarily unethical step taken by one staff supervisor. In one of the offices of the court where technical corrections are made on all justices' opinions, a supervisor told at least one secretary: "Don't correct any mistakes on Bird's papers. We don't want to do anything to help her. We want her to look foolish."

New appellate court judges go before the California voters at the first gubernatorial election after they are confirmed by the three-member Commission on Judicial Appointments. As November 7, 1978, approached, both natural and unnatural afflictions threatened Bird. There was the threat of her cancer. And there were the political threats. She was opposed from within the court and from outside the court. The outside opposition centered primarily in Richardson's Law and Order Campaign Committee and in No-On-Bird, an agribusiness-based campaign. It would become clear later that the external forces also included the office of the attorney general, who was then the Republican candidate for governor.



The California Supreme Court, 1977: (seated le O. Tobriner, Chief Justice Rose Bird, Stanley M. to right, Wiley Manuel, William Clark, Frank Frank Newman.

On election day, a startling story appeared on the front page of the *Los Angeles Times*. The charges in the *Times* story would be repeated that day on news broadcasts and in newspapers throughout the state:

> SACRAMENTO—The California Supreme Court has decided to overturn a 1975 law that requires prison terms for persons who use a gun during a violent crime, but has not made the decision public, well-placed court sources said Monday.
>
> The decision in, *People vs. Tanner*, is certain to anger law enforcement officials around the state.
>
> The court sources said the decision was reached on a 4-3 vote, with Chief Justice Rose Elizabeth Bird, whose name goes before the voters today, among the majority.
>
> The sources said that announcement of the decision is being delayed by Associate Justice Mathew O. Tobriner, who has been one of Ms. Bird's strong supporters against a well-organized campaign to win voter disapproval of her appointment to the court.

It was remarkable. It looked as though Richardson might have the chief justice on the edge of defeat. He had been trying to convince reporters for many weeks that decisions were being delayed improperly. He told me later that when he went to the *Los Angeles Times* the morning before election day it was the first time he had been able to get a reporter to take his charges seriously. But he also insisted that he himself never knew that the decision was being delayed, that he just suspected it. He called Justice Clark that day and paved the way for the *Times* to call Clark.

On election morning, it looked as though Richardson had also managed to bring into disrepute the integrity of the senior justice of the court, the nationally respected Mathew O. Tobriner. Liberal court observers would be saddened if Bird were defeated. But they would be grief-stricken by the damage done to Tobriner. To many of them he was a mentor, even a hero.

Until this point, the California Supreme Court had enjoyed a place of high respect in California and in the nation. Its decisions in both criminal and civil law often were precursors to important decisions by the United States Supreme Court, such as *Miranda v. Arizona*. Now, some members stood accused of playing politics with decisions, withholding them until after the election because they supposedly feared the public might defeat Rose Bird if it knew how she voted in this controversial case.

Bird won the election by only 1.7 per cent, the slimmest victory of any appellate court judge in the state's history. The accusations in the *Los Angeles Times* story gave Richardson a weapon that he would hold for years over every judge he chose to attack, not only on the Supreme Court but on the lower courts, too. In the legislature, there were strident calls for impeachment of both Tobriner and Bird.

A year-long investigation of the Court was conducted by the state's official watchdog on judges, the Commission on Judicial Performance. This was the most unusual investigation the commission had ever conducted. Created 20 years earlier, the commission had never investigated all the members of an appellate court—or conducted an inquiry in public. The commission's rules require it to conduct its initial, formal investigations, privately. If it decides on the basis of fundings at that

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private. Then, if it decides to
end public censure or removal of
. that decision and a record of the
proceedings are filed with the Su-
Court. At that point, the entire
becomes public.

in 1979 a special rule was passed
Judicial Council, the commission's
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vestigation to be public from the
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a grand jury investigation in pub-
e process safeguards were denied
en justices whose responsibility is
re that all citizens have due pro-
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ce at the public hearing that
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on lights. But the lack of due pro-
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law at issue in the *Tanner* case
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It was a symbolic statute because
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prison. During an attempted armed robbery, Tanner, a security guard, had used an unloaded and inoperable gun in a bizarre attempt to convince a 7-11 store manager he needed to improve security. The only way the judge could avoid sentencing Tanner to a five-to-life sentence was by dismissing, or striking, the charge that a gun was used. He struck it and put Tanner on probation, which meant he qualified for a county jail term, a far shorter period than imprisonment on the gun-use charge.

Whether judges still had the power to strike a gun-use charge in light of the new law became the crucial issue. In 1978, when the Supreme Court first voted on the case after a February hearing, justices Tobriner, Mosk, and Newman concluded that because of another existing law, which provided for probation in exceptional cases, the judge could strike and then grant probation. Justices Clark, Manuel, and Richardson disagreed. They claimed that notwithstanding the old statute, the new statute exclusively forbade probation when a gun was charged and proved. Chief Justice Bird agreed with the latter three justices that the legislature had been clear in its intent to take away a judge's power to grant probation. But, she alone on the court spoke to the constitutional issue, claiming that it was unconstitutional to remove a judge's inherent power to strike a finding in the interests of justice. Justice Clark strongly disagreed with the chief justice's contention.

Crucial to the eventual *Tanner* scandal was a dissent that summer by Clark in which he sharply criticized Bird and claimed that she was inconsistent in her concurring opinion in *People* v. *Caudillo* a few months earlier and in her concurring *Tanner* opinion. The claim was ironic in view of the fact that a few years earlier in the *Fuss* case, Clark had made the same claim Bird now made about a judge's right to strike. In *Caudillo*, a particularly grizzly rape case, one of the issues was whether the trial judge could increase a sentence once it was determined the defendant was going to go to prison; in *Tanner* the question was whether the judge had the authority to strike a finding. But in a stinging dissent, Clark insisted the issue was the same in both cases.

Bird notified Clark that she thought there was no legal basis for his contention, that he was politically motivated, and had placed the legally inappropriate reference in his dissent to embarrass or demean her.

Clark claimed under oath that her testimony at the investigation was the first time he had heard her explanation. He added that he didn't understand her testimony on this point. His law clerks, as well as Bird and her law clerks, had all testified that she had provided him with this explanation. Clark himself had testified as to what she had told him, the same explanation, in essence, that she gave at the hearing. He obviously had heard what she had said, but, as he admitted on the stand, he had never understood it.

Seth Hufstedler, the prestigious Los Angeles attorney hired as special counsel to the commissioner for this investigation, asked Clark if he understood the distinction the chief justice drew in the two cases. Clark responded, "I must admit I didn't spend much time in contemplation of that. But—so I am unable to answer your question." It was an amazing comment. The disagreement over the distinction between the two cases had been, in Clark's opinion, central to the reason why the *Tanner* decision had allegedly been delayed until after the election. Repeatedly during his testimony, Clark demonstrated that he did not then understand the legal issues of *Tanner* then was the most controversial and the most scrutinized of any case decided by the California Supreme Court.

Another example of his lack of knowledge surfaced when Clark asked permission to show the commission a large chart in order to explain the basis of his dissent. He meant to illustrate that by May 30, 1978, the day the *Tanner* case went to the chief justice after the first draft opinions had been signed by six other justices, all of those justices had agreed that the use-a-gun-go-to-prison statute was constitutional. But there was a problem. The information on Clark's chart was wrong. By that date, three justices—those who signed Tobriner's majority opinion—had explicitly stated in the opinion that they were *not* dealing with the constitutionality of the law.

Hufstedler read directly from Tobriner's majority opinion in *Tanner*: "We need not reach the constitutional issue . . . Do I read that correctly?" he asked Clark. "Is that not a statement that the three judges signing this [majority opinion] did not make the constitutional determination in the *Tanner* case . . .?"

"Obviously, that's a synopsis," Clark responded. Then he said he did not remember what the majority opinion had said on this major point that just minutes before he had been boldly, but er-

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Until Clark had testified, no one had provided evidence, or even raised suspicion, of delay. Justices Tobriner and Bird had denied delaying the decision, under oath. Each agreed it would have been a reprehensible thing to do. They testified before Justice Clark. Justice Frank Richardson, another Reagan appointee to the court, also completed his testimony before Clark. Richardson (no relation to the state senator) said he knew of no delay. The commission and the public waited for Justice Clark and Justice Mosk. These two men had been anonymous sources in according to testimony.

Of all the justices and other witnesses heard by the public, only William Clark was an accuser. Much of the time he looked like a puzzled schoolboy. His testimony produced no substantiation of the charges. On one hand, he suspected *Tanner* had been handled improperly; on the other hand, he knew of no impropriety by any judge in the handling of it or any other case and could not explain why he thought it had been handled improperly.

The commission was particularly interested in the background of some assertions Clark had made. Lou Cannon wrote in *The Washington Post*, on Thanksgiving Day, 1978, that Clark reportedly said he had "decisive reasons" for not signing a statement that Tobriner had distributed to each justice asking them to support his contention that the *Tanner* case had not been delayed. All the justices except Clark signed the statement. Richardson had signed it with a slight modification. Cannon reported that Clark would not explain his "decisive reasons" because he expected to have to testify under oath about the matter. Clark's testimony revealed that he had no "decisive reasons," except perhaps to give the impression that he knew of wrongdoing. It became clear in his testimony that there sometimes was a world of difference between what Clark actually knew and what he was willing to imply. He also had written a memo to his fellow justices in December, right before the *Tanner* case was released, that sparked much commission interest: "In conscience, it must be clear to all on the court that the *Tanner* case was signed up and ready for filing well in advance of November. The question appears to be why it was not filed."

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The commission tried to learn the basis of that assertion. The commission probably thought it would lead to evidence that no one else had provided. These exchanges between the commissioners and Clark illustrate the difficulty of their task:

QUESTION: Is it your feeling that despite the filing of a separate dissent on October 24th, that the opinion could have been filed before election day?

CLARK: When I wrote that [the memo] I was not looking at any particular phase or date. I did not look at the chronology [which was available to all judges].

QUESTION: The thing that puzzles me, Justice Clark ... The statement in your memo is that the case "was signed up and ready for filing well in advance of November." Did you mean days or weeks or couple of months, or did you mean it was perhaps ready for filing the last of October."

CLARK: As I have said, I have no time frame on it.

QUESTION: You stated that this is your belief now ... I don't really understand what facts you summoned or marshalled to support your belief in light of the fact that it was technically—we all know that all the signatures hadn't been obtained. Could you tell me what things ... you now see that led you to conclude that *Tanner* was ready for filing "well in advance of November"?

CLARK: I have marshalled no facts.... I still believe in what I wrote on 20 December 1978.

QUESTION: ... *Tanner* was not all wrapped up prior to October 10. Is that a fair statement?

CLARK: Yes, I think it is.

QUESTION: It was not ready for filing?

CLARK: Yes.

QUESTION: What puzzles me, we start whittling away at the days and weeks of October, it doesn't seem to me that at that point you ... arrive at the point well in advance of November where you say the opinion was ready for filing.

CLARK: I think your assumption is a good one.

QUESTION: Well are you saying then that the term "well in advance of November," as used in your memo, was an overstatement?

CLARK: I don't think so.

QUESTION: ... I can't reconcile in my own mind ... that what I have just discussed here is accurate and correct and that your statement that the opinion was ready for filing "well in advance" is also correct. Can you reconcile those two?

CLARK: No, I don't attempt to. I understand your concern.

QUESTION: I just am trying to understand what you really meant when you said the opinion was ready for filing "well in advance" of the November election ... Are you saying it was just a matter of two or three weeks?

CLARK: No. I wrote what I wrote, and felt that way then and, as I said, I feel no differently today.

QUESTION: Justice Clark, are you saying not that it was ready to file, but that it could and should have been ready to file well in advance of November?

CLARK: Yes.

QUESTION: Was it your — is it your — are you telling us that ... these changes and discussions and the possible reconciliation (in the months before the election) all related to cosmetic aspects ... instead of substantive aspects? Is that your position?

CLARK: It is.

But this exchange took place within the next hour of testimony:

CLARK: The cosmetology, I think, occurred between the election and filing. I didn't feel that ... cosmetic activity occurred prior to the election.

QUESTION: You think the case should have moved faster and ... there are no specific reasons for that view that you have in mind now?

CLARK: I don't think so.

QUESTION: Where should it have moved faster? ... What was wrong with the process as you observed it?

CLARK: I have not considered the question before today....

Clark also delayed opinions while he was on the court, according to Wright and others. In fact, the delays caused by Clark were much longer than the length of time taken to render a decision on *Tanner*. According to Wright, "He [Clark] was the slowest one on the court the whole time I was there." Wright said Clark often kept opinions for many months without taking action.

Though most of Clark's charges dissolved, the commission finally appeared to have something that seemed substantial. It pointed to potential evidence that another justice, Stanley Mosk, shared Clark's belief that wrongdoing might have occurred. The crucial Clark testimony:

At the time of the January [1979] calendar [hearing] in Los Angeles, Justice Mosk ... said, 'Bill, before election day I told Matt that it was obvious that cases were being held for filing after election, and I told him that it was obvious and if it were later revealed he would have to pay the consequences.

Clark added weight to this startling revelation by saying he had reviewed the details of the entire conversation, as Mosk had related it in January, with Mosk just before appearing before the commission and Mosk responded: "Yes, Bill, that is correct. In fact, I had two such discussions with Justice Tobriner."

Mosk now appeared to be the most important witness. But shortly before Clark made his relevation about Mosk, it was announced that Mosk would refuse to testify in public. He filed a lawsuit the day after Clark's sensational testimony, claiming that the hearings were unconstitutional because they were public. He won his lawsuit and testified in private. The public would not know until now what Mosk knew or believed. They would ha only Clark's word for it.

When the commission issued its cor clusions in early November 1979, i merely said that the investigation "is now terminated and the result hereby announced is that no formal charges will be filed against any Supreme Court justice...." The commission used most of its brief public statement to complain about the fact that it had been forced to close the hearing. It "remains vitally important that all of the evidence be thoroughly examined and analyzed," the report said. Two days later a member of the commission cautioned the public against viewing the decision not to bring charges as an exoneration. "I see no reason," said the commissioner, "the public should accept the result [of the investigation] because we didn't explain it."

After spending a year and more than a half million dollars of public funds, the commission had not settled the matter. The accused were still under a cloud.

If he were one of the accused, the then chairman of the commission, now retired, Justice Bertram Janes, told me, "I would be dissatisfied.... I would be inclined to feel that perhaps everything went for naught.... I would be very dissatisfied because I would feel that there was no answer to the question."

The commission claimed in its report that the court order that closed the hearings had prevented it from explaining its conclusion. Actually, the court order restricted the commission to its standard rules, which permit a brief public explanation of results if the investigation already is known to the public.

As it turned out, rules had little to do with the commission's failure to explain itself. One commissioner said: "Look, by the time we wrote that statement we were petulant, and the statement was petulant. We were fed up by that time and decided, 'This is all we're going to say.' Why, we could've written 50 pages explaining a

Though Reagan appointed Wright chief justice, he soon became disenchanted with him. The chief justice's liberal opinions enraged Reagan, who became determined to get rid of Wright.

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Rose Bird was a convenient symbol for the New Right in its attempt to impose a law-and-order philosophy on the California court system.

WIDE WORLD PHOTOS

The commission had become petulant in this fundamental investigation, an investigation that had damaged public confidence in the judicial system of California. This was profound irony, for in the end, this watchdog of the courts did not exhibit even the minimal responsibility that is shown daily by the average American juror.

After the hearing was over, commentators generally agreed that the strongest piece of evidence offered during the entire investigation was Clark's statement that Mosk had accused Tobriner. One leader in the antijudiciary movement called on the legislature to begin impeachment proceedings and said that testimony by Clark was the "evidence of probable high-court misconduct" that justified impeachment.

In a speech a week after the commission issued its statement, Clark called the results "inconclusive." That was true because the public never knew until now what Mosk said behind closely guarded doors, under oath, and without Clark or any other members of the court present, Justice Mosk told the commissioners:

- What Clark had told them about Mosk's accusations of Tobriner was not true.
- That no such conversation ever had taken place between Mosk and Tobriner.
- That Mosk never told Clark such a conversation had taken place.
- That he had never told Clark he thought *any* decision had been delayed until after the election.
- That the January conversation that Clark referred to was about an entirely different subject and Mosk had regarded the conversation as "trivial."
- That, contrary to Clark's testimony, Clark had not reviewed with Mosk the details of their earlier conversation before testifying.
- That Mosk did not think the *Tanner* decision or any other decision had been delayed by anyone for any purpose.

Mosk testified he had told Clark of a conversation in which told Tobriner of his concern about whether the *Fox* decision, which prohibited the city of Los Angeles from displaying lights in the shape of a cross on public buildings, would be released near Christmas and offend Christians. ". . . Good taste . . . that's all I had in mind," Mosk said. He said he never mentioned the election or any other case.

Tobriner was then asked in closed session about his conversation with Mosk. He said: "There never was such a conversation [as Clark charged] . . . I'm absolutely positive that no such conversation ever occurred." Asked if Mosk had talked to him about *Fox*, Tobriner said he had, more than once. To this day, Mosk has refused to comment publicly on the matter. One commissioner, Thomas Willoughby, asked Mosk during the closed portion of the hearing what was the "obligation of a member of a collegial body like the Supreme Court to set the record straight. . . . How does that mistake that is out in the public, how does that get corrected?"

"I would suggest to you," said Mosk, "that's the vice in having public hearings."

Incredulous, Willoughby said, "You mean—I don't mean this to be facetious, but are you saying that Justice Tobriner now has no alternative but to twist slowly in the wind?"

Mosk answered coldly: "I have to repeat my answer. That was one of the vices in having a public hearing in the first instance."

Mosk had refused to set the record straight about Tobriner. He had sued to close the hearing. And that same day, Mosk, through his attorney, asked the commissioners to release a public statement clearing him, Mosk, of any wrongdoing.

William Clark, the only person on the court who accused anyone of delaying the Tanner case, was, according to both public and secret testimony the only person on the court who mentioned delaying the case.

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Clark's actions on *Tanner* seemed to intensify in the six weeks before the election. In late September, he took the unusual step of moving the case from Tobriner to Manuel, despite the fact that Tobriner did not ask to have it removed and Manuel did not ask to receive it. Clark then asked Manuel to delay writing a dissent until Clark let him know if he had solved his conflict with Bird over the dissent that attacked the chief justice. But according to his testimony, instead of trying to solve that conflict, Clark suggested to Tobriner and Bird that the Chief Justice could delay the case until after the election. At the same time he privately told her she could delay it, he asked her in front of the other justices why the case wasn't coming up.

In his secret testimony, Manuel denied Clark's public suggestion that Manuel wrote his separate dissent as a favor to Bird rather than because he disagreed with Clark's dissent. Manuel also denied Clark's public claim that Manuel had never told him he disagreed with Clark's dissent. They contradicted each other on another important matter. Clark claimed he told Manuel he would tell him when to write his dissent. But Manuel said he waited for Clark's go-ahead but Clark never gave it. The effect, he said, was to make him write the dissent latter than he wanted to.

As Clark's law clerk, Maury Koblick, testified, Clark displayed an "unusual" interest in this case. The steps he took caused an injustice to his colleagues and the court itself. That injustice seemed to be no deterrent. It may have been his goal. If not his goal, it certainly seemed to be the goal of his friends outside the court.

In the summer of 1978 Clark's friends who were running the anti-Bird election campaigns sent letters to national corporations claiming that the court was delaying controversial decisions until after the election. In September, 1978 friends of Clark in the Attorney General's office, plus Clark's friend Meese, were joint authors of an article in a California legal newspaper that claimed *Tanner* was going to be delayed until after the election. Clark admitted in his testimony that he had been given a prepublication copy of that article.

SOURCE PHOTO FROM WIDE WORLD

Justice Wiley Manuel's dissent in the Tanner *case became the focus of crucial testimony during the commission hearings.*

Clark's close friend in Attorney General Evelle Younger's office, Herbert Ellingwood, told gubernatorial candidate Younger to use the charge that *Tanner* was being delayed in his campaign speeches. In mid-October Younger announced that he was "certain" the case was being delayed. When pressed the next day, after stories of his charge already had run, he said it was more of a question he was raising rather than a certainty. A few days later he repeated the accusation again.

"I felt my information was strong," Younger told me in 1981, three years after the election. He said he thought his source had it from inside the Supreme Court. When the commission investigators took Younger's deposition in private he said his source was Ellingwood. Younger also added, "I used some careless language. Certainly in the course of a campaign—" His voice dropped off and he paused as he looked out over downtown Los Angeles. Then he completed the thought, selecting his words carefully. "Well, I know I did—you say things that, on reflection, were not as accurate as they should've been."

When the commission investigators deposed Ellingwood under oath, he told them he had talked with Justice Clark to arrange for Clark to let him know when *Tanner* would be released. But he also said, "No justice on the Supreme Court or appellate court told me. . . . No member of the [court] staff talked to me about it."

But Ellingwood said under oath, "I believed then and I believe now that the Supreme Court withheld decisions for political purposes. That is, pending the election . . . And that's what I told Mr. Younger." It was, he said, "an accumulation of a lot of conversations and speculations and reading of reports, that sort of thing." Ellingwood said talk of the delay was rampant in the attorney general's office. The commission's investigators took depositions of 15 people from the attorney general's office. They constituted all the high officials in the criminal division. Each of these people agreed on three important points: No source within the court provided any information about a pending case before it was handed down. Nobody in the Attorney General's office knew of anybody else with such information. And nobody ever said they possessed such information.

If Ellingwood's sworn deposition, never revealed until now, is truthful, he spread this powerful, damaging accusation with no knowledge of whether it was true. What he said was important, for there probably would have been no public accusations of delay by the Republican candidate for governor, if it had not been for Clark's friend, Ellingwood.

About two weeks after the 1978 election, Chief Justice Bird prepared a statement that described how decisions work their way from oral hearing to final filing. She wanted to release it to the press. By that time many stories had been written that inaccurately described the process. One justice, Clark, objected. His reason? He told the court it "would be a mistake to release it because it would simply raise the issue [of delay] once again in the public's minds and cause some more stories." And yet, about the same day he urged Bird not to explain court procedures, Clark stimulated a news story by

Continued on page 34

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Continued from page 32

telling a reporter he had "decisive reasons" for refusing to sign the statement of the other justices asserting that no case had been delayed.

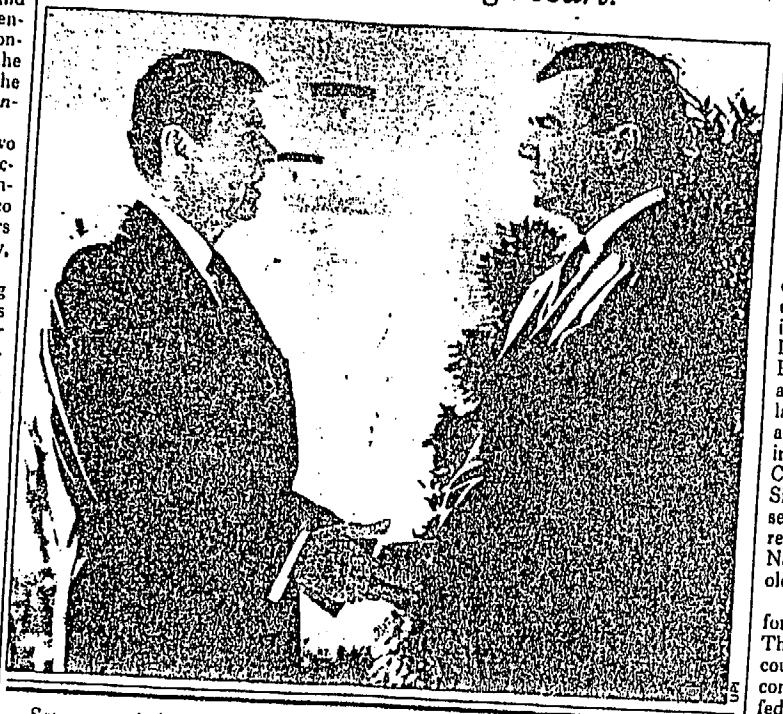
But Clark, Richardson, Younger, and the criminal division of the Attorney General's office were not the only ones responsible for misleading the public. So had the *Los Angeles Times*, which published the first story about the charges in the *Tanner* case.

Based on interviews with the two *Times* reporters—Robert Fairbanks, Sacramento bureau chief and William Endicott, a member of the San Francisco bureau—and with the other reporters around the state who picked up the story, the following conclusions can be drawn:

- The *Times* never had anything stronger than speculation by its sources that Tobriner had delayed the *Tanner* decision. None of the sources, said Fairbanks, provided *any* evidence or knowledge—direct or indirect—that they knew the *Tanner* decision was purposely delayed for political or any other reasons.
- The *Times* reporters did not understand at the time they wrote the story that the *Tanner* case had not, in fact, been "decided," or completed, as the story said it had been.
- The reporters never asked the questions about court processes that would have led them to understand what probably was happening to *Tanner*—it was winding through the court's complex pipeline, along with 16 other cases that had been in the pipeline even longer than *Tanner*.
- Fairbanks told me he thought the alleged delay of the *Tanner* decision was an *unconscious* act by Justice Tobriner, that he was delaying it to help the election of Bird, that Tobriner did not consciously know he was doing it.

Thus, Tobriner was a victim of a perfect accusation, one so cleverly executed that there could be no defense against it.

Clark's role on the California Supreme Court will be closely scrutinized if Reagan names his friend to the high court.



Some commissioners told me they attributed Clark's behavior, indefensible as it was, simply to "childishness." That conclusion is difficult to accept after reading the entire record of the public and private investigation. If one does not take the sum of Clark's actions and perceive a conscious design, one must view Clark as having drifted into an amazing number of accidental events that add up to a pattern of deviousness and maliciousness.

What happened in California in 1978 was an attempt to deceive the public about one of its most important institutions. It was also a crime against individuals—primarily Bird, Tobriner, and Manuel. People still snipe irresponsibly at Bird, but the tensions inside the court reportedly disappeared the moment Clark left for Washington.

Justices Tobriner and Manuel have both died. They never received the vindication they deserved. Members of the commission described their deliberations in detail and said that no member of the commission voted to charge *any* member of the court with delaying decisions until after the election. Given that, they were exonerated, but neither the justices nor the public were told.

The events flowing from the election day story have made it possible for a right-wing antijudiciary movement in California to achieve credibility. The notion has been planted that the judiciary is not an independent branch of government, but a branch that should be manipulated by, and beholden to, a powerful law-and-order constituency. It is no accident that every Republican who ran for major office in California last year, including Governor Deukmejian and United States Senator Pete Wilson, ran against Rose Bird as well as their opponents. Wilson was particularly audacious. During his campaign he announced that if she didn't vote his way in a particular case before the Supreme Court, he would work to have her recalled. Since election day 1978 there have been seven attempts to gather signatures to recall Bird from the bench. She is to the New Right what Earl Warren was to the old right: a scapegoat.

California has been the dress rehearsal for this attempt to subvert the judiciary. The leaders of the attack on the California courts say they intend to use their accomplishment as a model for attacking federal courts. And the leaders of the movement in Washington to strip specific issues from the purview of the federal courts—abortion and school prayer, for example—see California as an excellent model.

William Clark was a key figure in California during the attack on the courts. His past, and what it tells us of his competence and his integrity, raises disturbing questions about his present and future power in Washington. ■

THE WHITE HOUSE

WASHINGTON

October 24, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Edmund Stohr - Rank of Minister during the remainder of the tenure of his service as the Representative of the United States of America on the Council of the International Civil Aviation Organization

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 27, 1983

The President today announced his intention to nominate Edmund Stohr, of Illinois, for the rank of Minister during the remainder of the tenure of his service as the Representative of the United States of America on the Council of the International Civil Aviation Organization.

Mr. Stohr served in the United States Air Force in 1942-1946 as Captain. He was with United Airlines in 1946-1981 in a variety of staff and management positions including European Director in London, and Vice President of Industry Affairs in Illinois. In 1981-1982 he was Director of Travel Agency Affairs at the American Automobile Association in Falls Church, Virginia. Since 1982 he has been the Representative of the United States of America on the Council of the International Civil Aviation Organization in Montreal.

Mr. Stohr graduated from the University of Illinois (B.S., 1941). He was born February 5, 1918 in Elgin, Illinois.

# # #

THE WHITE HOUSE

WASHINGTON

October 27, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Nomination of Michael Marge to the National Council on the Handicapped

The President nominated Michael Marge to the National Council on the Handicapped on August 17, 1982, for the remainder of a term expiring September 17, 1983. Mr. Marge is now to be reappointed for a full term. Marge currently holds office pursuant to the statutory holdover provision, 29 U.S.C. § 780(b)(2). The pertinent statute explicitly authorizes reappointments, 29 U.S.C. § 780(b)(2).

Marge's situation has not changed in any significant way since he was first cleared by this office in the spring of 1982. (The President originally announced his intention to nominate Marge on March 23, 1982.) As a Professor of Special Education and Rehabilitation at Syracuse University he is well-qualified for this position. Marge is an Arab-American and has publicly criticized the Israeli invasion of Lebanon, but I do not regard that as pertinent. I see nothing that would preclude Marge's reappointment to the position for which he has been previously cleared and confirmed and in which he now serves.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 28, 1983

The President today announced his intention to nominate Diego C. Asencio, of Florida, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador to Brazil. He would succeed Langhorne A. Motley.

Mr. Asencio was an underwriter with Prudential Insurance Company in Newark, New Jersey in 1953-1955, and served in the United States Army in 1955-1957. He entered the Foreign Service in 1957 as Intelligence Research Analyst in the Department. He was Consular Officer in Mexico City (1959-1962), and Political Officer in Panama (1962-1964). In the Department he was Panama Desk Officer (1964-1965) and Special Assistant to the Assistant Secretary of State for Inter-American Affairs (1965-1967). He was Political Officer, then Deputy Chief of Mission in Lisbon (1967-1972), Counselor for Political Affairs in Brasilia (1972-1975), and Deputy Chief of Mission in Caracas (1975-1977). He was Ambassador to Colombia in 1977-1980. Since 1980 he has been Assistant Secretary of State for Consular Affairs.

Mr. Asencio received his B.S.F.S. in 1952 from Georgetown University. His foreign languages are Spanish and Portuguese. He was born July 15, 1931 in Nijar, Almeria, Spain.

# # #

THE WHITE HOUSE

WASHINGTON

October 26, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Diego C. Asencio - to be Ambassador to Brazil

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

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DOC NO	*Document Type / Document Description*	*No of pages*	*Doc Date*	*Restrictions*	
4	MEMO ROBERTS TO FRED FIELDING RE DIEGO ASENCIO	1	10/18/1983	B6	312

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
5	MEMO ROBERTS TO FRED FIELDING RE DIEGO ASENCIO	1	9/26/1983	B6	313

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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John

THE WHITE HOUSE
WASHINGTON

Date 10.31.83

Suspense Date _____

MEMORANDUM FOR: Counsel's Staff

FROM: **DIANNA G. HOLLAND**

ACTION

_____ Approved

_____ Please handle/review

__X__ For your information

_____ For your recommendation

_____ For the files

_____ Please see me

_____ Please prepare response for _____ signature

_____ As we discussed

_____ Return to me for filing

COMMENT

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DOC NO	*Document Type / Document Description*	*No of pages*	*Doc Date*	*Restrictions*	
6	MEMO CLAIRE O'DONNELL TO JANE DANNENHAUER, RE PAS AND PA CANDIDATE WITHDRAWALS	1	10/31/1983	B6	1136

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 31, 1983

NOMINATIONS SENT TO THE SENATE:

Diego C. Asencio, of Florida, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Brazil.

Edmund Stohr, of Illinois, for the rank of Minister during the remainder of his service as the Representative of the United States of America on the Council of the International Civil Aviation Organization.

Lenore Carrero Nesbitt, of Florida, to be United States District Judge for the Southern District of Florida, vice C. Clyde Atkins, retired.

Mari Maseng, of South Carolina, to be an Assistant Secretary of Transportation, vice Lee L. Verstandig, resigned.

Kenneth S. George, of Texas, to be Director General of the United States and Foreign Commercial Services. (New Position - Public Law 97-377, of December 21, 1982)

Thomas F. Moakley, of Virginia, to be a Federal Maritime Commissioner for the term expiring June 30, 1988. (Reappointment)

The following-named persons to be Commissioners of the United States Parole Commission for terms of six years:

Helen G. Corrothers, of Arkansas, vice Robert D. Vincent, resigned.

Vincent Fechtel, Jr., of Florida, vice Audrey A. Kaslow, term expiring.

Paula A. Tennant, of California, vice Cecil M. McCall, term expiring.

# # # #

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 4, 1983

The President has designated Ambassador at Large Vernon A. Walters as his Personal Representative, with the rank of Special Ambassador, to attend the ceremonies incident to the inauguration of His Excellency Maumoon Abdul Gayoom, recently reelected as President of the Republic of Maldives. These ceremonies are scheduled to be at Male on November 11, 1983.

# # #

THE WHITE HOUSE

WASHINGTON

November 10, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Geoffrey Swaebe - to be Ambassador to Belgium

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 18, 1983

The President today announced his intention to nominate the following individuals to be Members of the National Council on the Handicapped for terms expiring September 17, 1986. These are reappointments.

H. LATHAM BREUNIG is past President of the Alexander Graham Bell Association for the Deaf. He was with Eli Lilly and Company for over 40 years. He resides in Arlington, Virginia and was born November 19, 1910.

MICHAEL MARGE is currently a Professor of Communicative Disorders and Child and Family Studies at Syracuse University. He resides in Fayetteville, New York and was born October 26, 1928.

ALVIS KENT WALDREP, JR., is Founder and Chief Executive Officer of the Kent Waldrep International Spianal Cord Research Foundation, Inc. He resides in Grand Prairie, Texas and was born March 2, 1954.

# # #

THE WHITE HOUSE
WASHINGTON

Date 11.21.83

Suspense Date _____

MEMORANDUM FOR: Counsel's Office Staff

FROM: **DIANNA G. HOLLAND**

ACTION

_____ Approved

_____ Please handle/review

X For your information

_____ For your recommendation

_____ For the files

_____ Please see me

_____ Please prepare response for _____ signature

_____ As we discussed

_____ Return to me for filing

COMMENT

_____

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DOC NO	*Document Type / Document Description*	*No of pages*	*Doc Date*	*Restrictions*	
7	MEMO CLAIRE O'DONNELL TO JANE DANNENHAUER, RE PAS AND PA CANDIDATE WITHDRAWALS	1	11/18/1983	B6	1137

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
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B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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THE WHITE HOUSE

WASHINGTON

November 28, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Walter Leon Cutler - to be Ambassador to the Kingdom of Saudi Arabia

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts